LIBRARY
SUPREME COURT, U. S.

No. 1048

Office - Supreme Court, U.S.
FILED
JUN 5 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

THE MANUFACTURERS LIFE INSURANCE COMPANY,

Respondent,

AGAINST

ALBERT BARNETT KLEPPER and EDWARD SCHNUR,

Petitioners,

AND

TANNER ASSOCIATES, INC., and MARIE M. CONSTANT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ALBERT BARNETT KLEPPER
AND
EDWARD SCHNUR,
Petitioners.

BY ANDREW J. DRITSAS,
Attorney.

ALBERT BARNETT KLEPPER,
on Petition.

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0689.

INDEX

	PAGE
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	3
Conclusion	8
APPENDIX	9

CASES CITED

Ballard v. Henger, 204 U. S. 241, 27 S. Ct. 261	7
Central Tran. & T. Co. v. Campbell Co., 172 U. S. 84, 19 S. Ct. 346	7
De Bean v. Safe Deposit & T. Co., 233 U. S. 24, 34 S. Ct. 584	7
Field v. Barker Asphalt Paving Co., 194 U. S. 618, 24 S. Ct. 784	7
Flanagan v. Marvel, 94 Fed. Supp. 145	6
Kane v. New Jersey, 242 U. S. 160, 37 Sup. Ct. 30	6
Kline v. Burke Construction, 260 U. S. 229, 43 S. Ct. 79, 82	6

PAGE

Mountain Timber Co. v. Washington, 243 U. S. 219, 37 S. Ct. 260 7

National Cancer Hospital of America v. Webster (Docket #24758, not yet reported) 5

State Tax Comm. v. Jackson, 283 U. S. 527, 51 S. Ct. 540 7

Truax v. Corrigan, 257 U. S. 312, 42 S. Ct. 124 7

United States v. Bank of New York, 296 U. S. 463 .. 5

Williams v. Arkansas, 217 U. S. 79, 30 S. Ct. 493 ... 7

STATUTE CITED

New York Civil Practice Act, Section 287 4

AUTHORITIES CITED

A Study in Interstate Adjustments, The Compact Clause of the Constitution (Frankfurter and Landis, 34 Yale L. J. 685) 6

American Jurisprudence, Vol. 12, Sec. 477 7

American Bar Association Journal, March 1958, Vol. 44,243 "Shall we curtail diversity jurisdiction?" 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

THE MANUFACTURERES LIFE INSURANCE COMPANY,
Respondent,

AGAINST

ALBERT BARNETT KLEPPER and EDWARD SCHNUR,
Petitioners,

AND

TANNER ASSOCIATES, INC., and MARIE M. CONSTANT,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners Albert Barnett Klepper and Edward Schnur, pray that a Writ of Certiorari issue to review the decision and judgment of the United States Court of Appeals for the Third Circuit, filed April 25, 1958, which affirmed the judgment of the United States District Court for the District of New Jersey, entered on December 9, 1957 in favor of the Manufacturers Life Insurance Company, as plaintiff, interpleading the defendants, and enjoining the pending action in the Supreme Court of the State of New York, County of Kings.

The courts below did not file an opinion.

Jurisdiction

The judgment of the Court of Appeals was entered on April 25, 1958. It is printed in full in the Appendix, *infra*, pages 9-10. The Circuit Court has in effect decided that the interpleader compact between the State of New Jersey and New York is unconstitutional under the 14th Amendment of the United States Constitution and, its decision is in conflict with the Civil Practice Act of the State of New York, Sections 285, 286 and 287. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28 U. S. C. A. Section 1254(1).

Question Presented

Does the Supreme Court of New York in view of the Interpleader compact between the State of New York and the State of New Jersey possess the constitutional power to obtain the requisite personal jurisdiction over all the claimants?

Statutes Involved

Federal Constitution, Section 10, Article 1;

Sections 1335, 1397, and 2361;

Federal Constitution, Amendment XIV;

Title 28, U. S. C. A.;

Sections 285, 286 and 287 of the Civil Practice Act of the State of New York.

Statement of the Case

The basis of federal jurisdiction in the District Court was the claim of The Manufacturers Life Insurance Company that the Supreme Court of New York did not possess the constitutional power to obtain the requisite personal jurisdiction over all the claimants, so that the relief of interpleader which the New York Supreme Court might give would be adequate and complete.

At the outset we point out that The Manufacturers Life Insurance Company in its complaint alleged that its funds were attached by the petitioner Albert Barnett Klepper, prior to the institution of the action in the District Court, in a pending action in the Supreme Court of the State of New York, County of Kings.

The Courts below, on the sole basis that the District Court was the only court which afforded ample relief, divested the Supreme Court of the State of New York from its jurisdiction.

We point out that the cases cited by all parties in the court below, did not involve, what petitioners claim to be the controlling fact viz.: a state compact between the State of New York and the State of New Jersey.

The state compact with consent of Congress, authorized by the Federal Constitution (Section 10, Art. 1) has been resorted to in recent years for more effective and uniform interstate action by the states in the absence of Congressional regulation.

Reasons for Granting the Writ

1. The decision below narrows and constricts applicable decisions of this Honorable Court and is probably in conflict with them.

2. The decision below conflicts with decisions in Courts of Appeal of other Circuits and with District Court decisions.

3. Uniformity is required and necessitates a controlling decision by this Honorable Court.

4. The decision of the court below is erroneous.

The court below disregarded the fact that the State of New York and the State of New Jersey are both parties to an interpleader compact, giving the Supreme Court of the State of New York personal jurisdiction of all the parties to this suit.

Section 287 New York Civil Practice Act was cited under Appellant's first point with the argument that the State Court first acquired control of the res, and, the state interpleader action afforded ample relief in a binding action, and is part of the Interpleader Compact entered into "to promote comity and judicial cooperation" between the State of New York and the State of New Jersey "to relieve from undue risk and uncertainty, a person who may be subject to double or multiple liability because of the existence of adverse claimants, one or more of whom *in the absence of this compact* may not be subject to the jurisdiction of the adjudicating court, when such person makes all reasonable efforts to secure judicial determination and discharge of his liability."

(Section 287, New York Civil Practice Act, Sd. 1 and 2.) Under subdivision 2c of the interpleader compact it is provided that "Interpleader shall mean a judicial procedure by which two or more persons, who have adverse claims against a third person may be required to litigate these claims in one proceeding"; and under subdivision 3 service of process sufficient to acquire personal jurisdic-

tion is provided for within the states which are parties to the compact; and under subdivision 5 provides for finality of judgment wherein it states that "no judgment obtained against any person in any action to which he had become a party by reason of service of process effected pursuant to the provisions of this compact shall be subject to attack on the ground that the adjudicating court did not have personal jurisdiction over such person."

The decision below conflicts with *United States* v. *Bank of New York*, 296 U. S. 463 where at page 477, the court stated:

> "The principle, applicable to both federal and state courts, that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has actually been seized under judicial process before a second suit is instituted. It applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature, where to give effect to its jurisdiction, the Court must control the property."

Decisions in other Circuit and District Courts are also inconsistent with the results herein.

On January 20, 1958 the United States Court of Appeals, 2nd Circuit in the case of *National Cancer Hospital of America* v. *Webster* (Docket #24758, not yet reported) Mr. Justice Hand stated:

> "The object of the statute is to afford a new form of relief where needed, not to furnish a new choice of tribunals, or to draw into federal courts the adjudication of causes properly cognizable by courts of the states."

In *Flanagan* v. *Marvel*, 94 Fed. Supp. 145, the plaintiff's interpleader was dismissed on the ground that the state interpleader action afforded ample relief to a stakeholder, and there was no equitable basis for a Federal Court assuming jurisdiction, and stated at page 148: "where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the court's jurisdiction. *Kline* v. *Burke Construction*, 260 U. S. 229, 43 S. Ct. 79, 82."

Since 1890 the National Conference of Commissioners on State Laws has promoted uniformity by State Legislation, where diversity of treatment is an interstate evil.

See: A Study in Interstate Adjustments, The Compact Clause of the Constitution (Frankfurter and Landis, 34 Yale L. J. 685).

This Court has itself often recognized the importance of adjusting relations in this field.

In *Kane* v. *New Jersey*, 242 U. S. 160, 37 Sup. Ct. 30, at 167-168 per Brandeis, J.

> "The Maryland law contained a reciprocal provision by which non-residents whose cars are duly registered in their own states are given for a limited period free use of the highways in return for similar privileges granted to residents of Maryland. Such a provision promotes convenience of owners and prevents the relative hardships of having to pay the full registration fees for a brief use of the highways. It has become common in legislation."
> * * *
> "There is nothing to show that the requirement is unduly burdensome in practice. It is not a dis-

crimination against non-residents, denying them equal protection of the law. On the contrary it puts non-resident owners upon an equality with resident owners."

The general rule is well settled that legislation which, in carrying out a public purpose is limited in its application, if within the sphere of its operation affects alike all persons similarly situated, is not within the prohibition of the Fourteenth Admendment." (American Jurisprudence, Vol. 12, Sec. 477.)

State Tax Comm. v. *Jackson*, 283 U. S. 527, 51 S. Ct. 540;
Truax v. *Corrigan*, 257 U. S. 312, 42 S. Ct. 124;
Mountain Timber Co. v. *Washington*, 243 U. S. 219, 37 S. Ct. 260;
Williams v. *Arkansas*, 217 U. S. 79, 30 S. Ct. 493;
Field v. *Barker Asphalt Paving Co.*, 194 U. S. 618, 24 S. Ct. 784.

A statute which requires personal service of summons upon resident owners of land and provides for constructive service by publication upon non-resident owners does not create an invalid discrimination.

Ballard v. *Henger*, 204 U. S. 241, 27 S. Ct. 261;
De Bean v. *Safe Deposit & T. Co.*, 233 U. S. 24, 34 S. Ct. 584;
Central Tran. & T. Co. v. *Campbell Co.*, 173 U. S. 84, 19 S. Ct. 346.

Apart from the foregoing judicial authorities, we refer the Court to the American Bar Association Journal, March 1958, Vol. 44,243 entitled "Shall we curtail diversity jurisdiction?"

The conflicts between the above cases and the case at bar is irreconciliable and should be resolved by this Honorable Court.

Conclusion

A matter of substantial importance, governed by federal law is presented herein.

On the basis of the authorities above set forth, the decision of the Court below appears to be in conflict with the decisions of other District Courts and Courts of Appeal for other Circuits, and with decisions of this Honorable Court.

Wherefore petitioner respectfully prays that this petition for a writ of certiorari should be granted.

Dated New York, May 7th, 1958.

Respectfully submitted,

ALBERT BARNETT KLEPPER,
AND
EDWARD SCHNUR,
Petitioners.

BY ANDREW J. DRITSAS,
Attorney.

ALBERT BARNETT KLEPPER,
on Petition.

Appendix

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 12,515

THE MANUFACTURERS LIFE INSURANCE COMPANY,

vs.

ALBERT BARNETT KLEPPER, EDWARD SCHNUR, TANNER ASSOCIATES, INC., and MARIE M. CONSTANT

ALBERT BARNETT KLEPPER and EDWARD SCHNUR, *Appellants.*

On appeal from the United States District Court for the District of New Jersey.

Present:

MARIS, KALODNER and HASTIE,

Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

IDA O. CRESKOFF,
Clerk

April 25, 1958